

the rate of 8% per annum from date of service of writ to date hereof and \$1,454.72¢ agreed special damages, interest at the rate of 4% per annum from date of accident to date hereof and costs. As the plaintiff is still a minor, I also direct that the judgment sum be deposited with the Public Trustee to be held on trust for her education, maintenance and other benefits until she reaches majority with liberty to apply.

Order accordingly.

Solicitors: *R.K. Nathan.*

PARVATHY & ORS. v. LIEW YOKE KHOON

[O.C.J. (Vohrah J.) June 23, 1983]

[Kuala Lumpur – Civil Suit No. P2805 of 1978]

Road Traffic – Fatal accident and injuries – Damages – Loss of dependency – Claim on behalf of estate of dental surgeon – Quantum.

Damages – Fatal accident – Loss of dependency – Claim by widow of dental surgeon.

The claims in this case were, namely,

- (1) Loss of dependency of the wife and the 3 children including special damages;
- (2) Loss to the estate of Dr. Kandiah Paranjothy deceased; and
- (3) Damages for injuries to the wife and the 2 children concerned.

Held: (1) the court should not take into account the housing and entertainment allowances in computing the actual salary of the deceased. These were actually allowances to reimburse the deceased for expenses which he incurred or was expected to incur and they could by their very nature have been withdrawn at any time by the Government. The court would award \$95,100.00 based upon the actual salary plus the specialist allowance which was a pensionable allowance and forms an integral part of a specialist's salary; 5 years' purchase of \$2,100.00 according to the annuity Tables amounting to \$109,104.00 and claim for loss of pension \$29,800.00;

(2) the plaintiff should also be awarded \$7,270.00 special damages for several items lost by the plaintiff because of the defendant's negligence which caused the plaintiff to lose consciousness resulting in her belongings being stolen or removed from the scene of the accident;

(3) claim for \$9,326.35 being the sum actually incurred in extracting the grant of Letters of Administration would also be allowed;

(4) general damages for pain and suffering and loss of amenities in respect of the children (a) Devan – \$750.00 for the 3 lacerations (b) Anand – \$1,000.00 for the 3 lacerations

A tions and haematoma and (c) Parvathy – \$750 for her laceration. 8% interest from the date of service of the summons in respect of (a), (b) and (c) was also awarded.

(5) costs to the plaintiff as taxed or agreed.

Cases referred to:

- (1) *Khoo See Moi v. Tay Teik Chang* [1970] 2 M.L.J. 249.
- (2) *Tham Meng Fatt v. Utam Singh Omnibus Co. Ltd.* [1982] 2 M.L.J. 355.

CIVIL SUIT.

C *R.K. Nathan* for the plaintiffs.
Y. Sodhy for the defendants.

D **Vohrah J.** (delivering oral decision): Liability in these three suits having been admitted I should consider the claims under the following three heads, namely:

1. Loss of dependency of the wife and the 3 children including special damages;
2. Loss to the estate of Dr. Kandiah Paranjothy, deceased; and
- E 3. Damages for injuries to the wife and the 2 children concerned.

But Counsel for the plaintiffs has confined their claims to loss of dependency including special damages and personal injuries and I shall therefore make my award under these two heads on the basis of the written submissions of both Counsel.

1) Claim for loss of dependency

G I agree with Mr. Sodhy that the court should not take into account the housing and entertainment allowances in computing the actual salary of the deceased. These are actually allowances to reimburse the deceased for expenses which he incurred or was expected to incur and they could by their very nature have been withdrawn at any time by the Government. Accordingly the figures I am awarding under the different periods will be based upon the actual salary plus the specialist allowance which is a pensionable allowance and forms an integral part of a specialist's salary.

- I a) Loss of dependency at the rate of \$1,500 per month when the deceased was in Superscale 'F' from date of death to end of February 1980 when he would have been promoted to Superscale 'E' (1.4.76 to 28.2.80 = 46 months)
- \$1,500 x 46
= \$69,000.00
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b) Loss of dependency at the rate of \$2,000 per month when the deceased was in Superscale 'E' with first segmental increase for 1 year from March 1980 to February 28 1981 (13.80 to 28.2.81 = 12 months)
 $\$2,000 \times 12$
 $= \$24,000.00$
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c) Loss of dependency at the rate of \$2,100 per month when the deceased was in Superscale 'E' with second segmental increase from March 1, 1981 to date of retirement of March 27 1981 (1 month) = \$2,100.00
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These three sums totalling \$95,100.00 will bear interest at the rate of 4% per annum from the date of the accident.

The deceased, in view of the youth of his 3 children, would have continued working until the age of 60 when I think it would, in normal circumstances, have been quite difficult for him to continue his arduous physical duties as a dental surgeon. I would accordingly, taking into account contingencies, give the plaintiffs 5 years' purchase of the multiplicand of \$2,100/-:

d) 5 years' purchase of \$2,100/- according to the Annuity Tables = \$109,104.00

This sum, I adjudge, will not bear any interest.

It is undisputed that people live longer these days and the law on pensions now is that a wife is entitled to the full pension of her husband after his death if she does not remarry. I think a period of 12 years, taking the wife's age into account and allowing for contingencies, from the date the deceased would have retired is a fair and reasonable period for the enjoyment of the pension. I accordingly award 12 years' purchase of the multiplicand derived from the difference between what the deceased would have drawn had he survived and what the wife now draws, i.e. \$1,655 minus \$1,373.07 = say \$280/-:

e) Claim for loss of full pension because of premature death after date of retirement, i.e. 12 years' purchase of \$280/- according to the Annuity Tables =
 $\$29,800.00$.

This sum too will not bear any interest.

2) Claim for special damages

On the authority of *Khoo See Moi v. Tay Teik Chang*⁽¹⁾ and *Tham Meng Fatt v. Utam Singh Omnibus Co. Ltd.*⁽²⁾ I was of the view that it was in order to allow the amendment to the

A particulars of special damages as applied for by Counsel for the plaintiffs. If things are lost by a plaintiff because of the defendant's negligent act which causes the plaintiff to lose consciousness resulting in his belongings being stolen or removed from the scene of the accident, surely the defendant should not be allowed to rely upon the statement that it was the plaintiff's want of care that was directly responsible for the loss. I also think it is perfectly natural in the context of our society for an Indian woman to take along her jewellery for an Indian wedding and I believe that all the items specified as having been lost were actually lost; and, as this is a consolidated suit, although item (i) under the particulars of special damages of Civil Suit No. 2805 of 1978, according to Counsel for the defendants, should strictly have appeared as an item of special damage to the estate of the deceased, I will allow it under the said Civil Suit. I now adjudge the sums against the items I specify as follows:

(i)	Agreed funeral expenses	\$1,500.00
(ii)	3 pairs of earrings	750.00
(iii)	7 bangles	400.00
(iv)	1 gold chain with rubies and pearls	2,000.00
(v)	Vanity Case	40.00
(vi)	Toilette requisites	100.00
(vii)	Cash	650.00
(viii)	Children's clothing	200.00
(ix)	10 sarees	500.00
(x)	Deceased's clothing and suits	250.00
(xi)	Loss of bag	50.00
(xii)	1 gold ring	150.00
(xiii)	Samsonite bag	80.00
(xiv)	Gold pendant	100.00
(xv)	Repairing Rolex watch	500.00

G I also allow the claim for \$9,326.35 being the sum actually incurred in extracting the grant of letters of administration.

(xvi)	Cost of taking out L.A.	\$9,326.35
Total		<u>\$16,596.35</u>

H

The total amount of special damages in the sum of \$16,596.35 is to bear 4% interest per annum from the date of the accident.

I 3) 'Claim for general damages for pain and suffering and loss of amenities

In respect of:

a) Devan Paranjothy -
 \$750/- for the three lacerations at 8%

interest from the date of the service of the summons.

- b) Anand Paranjothy –
\$1,000/– for the 3 lacerations and haematoma at 8% interest from the date of the service of the summons.
- c) Parvathy Devi Paranjothy –
\$750/– for her lacerations at 8% interest from the date of the service of the summons.

4) Costs to plaintiffs as taxed or agreed.

Order accordingly.

Solicitors: *R.K. Nathan; Sodhy Yaacob.*

CHONG SOW YING & ANOR. v. OFFICIAL ADMINISTRATOR

[O.C.J. (Shaik Daud J.) August 12, 1983]

[Kuantan – Civil Suit No. 421 of 1976]

Road Traffic – Fatal accident – No witnesses – Inference from sketch plan & photographs.

Damages – Quantum – Fatal accident – Dependency claim – Income tax assessment not conclusive.

This suit arose as a result of a collision between car No. C. 6917 driven by one Tung Mun (deceased) and the car No. CB. 2486 driven by one Mohamed (also deceased). The 1st plaintiff was the widow and administrator of the estate of Tung Mun. The defendant originally was the Official Administrator but later was substituted by Bidah bte. Daud, the widow of Mohamed.

The collision occurred on May 30, 1974 near 32 ms. Kuantan/Kemaman Road. There were no eye-witnesses to the collision. The drivers of both vehicles died in the collision. The court was therefore left with only the sketch plan, photographs of the damages to both vehicles to decide as to the liability. Both parties agreed that the collision took place on a straight stretch of road and that the driver of vehicle C. 6917 was proceeding towards Kemaman and the driver of vehicle CB. 2486 was proceeding from the direction of Kemaman towards Kuantan.

The sketch plan and photographs revealed that this was not a head-on collision. The point S in the sketch would indicate the point of impact which is on the other side of the road as one faces Kuantan. It shows that vehicle CB. 2486 which was being driven from Kemaman to Kuantan had gone on to the other side of the road that is in the path of the oncoming vehicle C.6917 which was being driven from Kuantan towards Kemaman.

The deceased plaintiff was 60 years old. The widow said that she received \$1,000 per month from him for

A household expenses. There was no evidence of the deceased's actual monthly earnings and the court had to rely on the widow's evidence. The defence produced the deceased's income tax assessment for 1973 which showed that he was assessed for \$501.08 and from this it was deduced that his nett average earnings could not be more than \$800/– per month.

B Held (1) every evidence available points to the driver of car CB. 2486 being on the wrong side of the road thereby resulting in the collision. The driver of car CB. 2486 was therefore solely liable.

(2) merely producing an income tax assessment could not show the actual earning without more details of deductions, etc. The widow's evidence on the amount she used to receive from her late husband had not been disproved. In the circumstances a dependency of \$500 was a fair and reasonable figure to arrive at. Having regard to the accused's age of 61, a multiplier of 6 years would be reasonable;

(3) general damages of \$36,000/– and special damages of \$945/– were allowed.

D CIVIL SUIT.

Mahindar Singh for the plaintiff.

B.M. Bodipalar for the defendants.

Cur. Adv. Vult.

E Shaik Daud J.: This suit arose as a result of a collision between car No. C.6917 driven by one Tung Mun @ Tung Mun Yoke (deceased) and the car No. CB. 2486 driven by one Mohd. b. Haji Abas (also deceased). The plaintiff, Madam Chong Sow Ying, is the widow and administratrix of the estate of Tung Mun @ Tung Mun Yoke. The defendant originally was the Official Administrator but later substituted by Bidah bt. Daud, the widow of Mohd. b. Haji Abas. At the outset of the trial both parties informed the Court that they had agreed to the special damages a total of \$945.00 made up as follows:–

Funeral expenses	\$500.00
Administrative expenses	\$400.00
Cost of documents	\$45.00

H The said collision occurred on May 30, 1974 at or near the 32nd milestone Kuantan/Kemaman Road. There were no eye-witnesses to this collision and the drivers of both vehicles died in the collision. As there were no eye-witnesses to the collision the court is left with only the sketch plan, photographs of the damages to both vehicles to decide as to the liability. Both parties agreed that the collision took place on a straight stretch of road and that the deceased driver of vehicle C.6917 was proceeding from the direction of Kuantan towards Kemaman and the deceased driver of vehicle CB. 2486 was proceeding from the direction of Kemaman towards Kuantan.